Before the Federal Communications Commission Washington, DC 20554

In the Matter of)
Request for Review by)
) CC Docket No. 02-06
Utah Education & Telehealth Network,)
aka Utah Education Network (BEN 150246)) CC Docket No. 13-184
of)
Decision of Universal Service Administrator)
)

Request for Waiver of the Commission's Rule Requiring Appeals be Filed within 60 Days

RE: Appeal of USAC Decision to Deny Funding Request and Subsequent Appeal 2015 FCC Form 471 # 1004867, FRN 2729808 SPIN – 143002567, Manti Telephone Company

The Utah Education and Telehealth Network seeks a waiver of the Commission's rule requiring appeals be filed with the Commission within 60 days of an adverse decision made by USAC.¹ Any of the Commission's rules may be waived if good cause is shown.² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴ As the Commission has noted in deciding E-rate requests for waivers,

¹ 47 C.F.R. § 54.720(a).

² 47 C.F.R. § 1.3.

³ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

⁴ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166.

simple "mistakes do not warrant the complete rejection" of E-rate applications.⁵ Further, the Commission has granted waiver requests exactly like this one when parties have submitted their appeals to USAC or the Commission only a few days late.⁶

Through an error in calculating the date on which such appeal is due, UEN incorrectly concluded that the filing deadline for its appeal was March 26, 2016, instead of March 21, 2016. UEN requests that the Commission treat its Appeal as timely filed based on a filing date of March 25, 2016, which is the date that this Motion and the Appeal itself were contemporaneously filed with the FCC and served upon the Universal Service Administrative Company, Schools and Libraries Division.

Respectfully requested,

Sabrina Scott

Utah State E-rate Coordinator
Utah Education and Telehealth Network
101 Wasatch Dr.
Salt Lake City. UT 84112

Solmin S. So

e: sabrina.scott@utah.edu

⁵ Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, FCC 07-35, at para. 10 (2007) (Adams County Order).

⁶ See, e.g., Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late). See also Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, DA 16-220 (Feb. 29 2016) (granting the waiver request of Bastrop Independent School District, TX, Application No. 962244, Request for Waiver, CC Docket No. 02-6 (filed Jan. 27, 2016).

Certificate of Service

I, Sabrina Scott, certify that, on the date stated below, I caused the foregoing Request for Waiver, and the foregoing Request for Review by Utah Education & Telehealth Network, aka Utah Education Network (BEN 150246) or Decision of Universal Service Administrator to be served upon the Administrator by mailing a true and correct copy to the Universal Service Administrative Company School and Libraries Division, Correspondence Unit, 30 Lanidex Plaza West, P.O. Box 685, Parsippany, New Jersey, 07054-0685.

Dated this 25th day of March, 2016

Salvin Scoto.

(signature)

Before the Federal Communications Commission Washington, DC 20554

In the Matter of)	
Request for Review by)	CC Docket No. 02-06
Utah Education & Telehealth Network, aka Utah Education Network (BEN 150246))	CC Docket No. 13-184
of)	
Decision of Universal Service Administrator)	

Appeal of USAC Decision to Deny Funding Request and Subsequent Appeal 2015 FCC Form 471 # 1004867, FRN 2729808 SPIN – 143002567, Manti Telephone Company

I. PARTY'S INTEREST

The Utah Education and Telehealth Network ("UEN") is a well-known state network consortium, established by statute as a governmental entity of the State of Utah. UEN has a long history of success in facilitating the buildout of private-sector high-speed broadband infrastructure throughout the state, including areas served by very small rural carriers such as Manti Telephone Company. In fulfilling its statutory responsibilities, the network has established competitive, contract-based public/private partnerships with nearly every provider of fiber-based high speed broadband services. In Utah, UEN has been a primary driver of broadband competition and continues to serve as the public anchor tenant for the vast majority of publicly leased private broadband services throughout the state. UEN's activities have directly

resulted in deployment of private fiber infrastructure throughout the state and play a significant role in Utah's continued high rankings for citizen connectivity and broadband speeds.¹

For funding year 2015, UEN sought funding under the Universal Service Program for Schools and Libraries ("E-Rate") for Universal Service Support Mechanism reimbursement of eligible recurring charges under a contract between UEN and Manti Telephone Company (the "Manti Contract"). The funding request, in the amount of \$35,368.20, was denied by the Universal Service Administrative Company ("USAC") via Funding Commitment Decision Letter ("FCDL") dated October 1, 2015 (see <u>USAC Funding Commitment Decision Letter</u>, October 1, 2015, attached hereto and referred to herein as <u>Exhibit A</u>). UEN appealed that denial on November 25, 2015 (see <u>Utah Education Network Appeal of USAC Funding Commitment Decision, November 25, 2015</u>, attached hereto and referred to herein as <u>Exhibit B</u>). USAC denied UEN's appeal via letter sent on January 21, 2016 (see <u>USAC Administrator's Decision on Appeal, January 21, 2016</u>, attached hereto and referred to herein as <u>Exhibit C</u>). UEN now seeks FCC review of USAC's denial of funding.

II. RELEVANT FACTS

UEN engaged Manti Telephone Company to provide high-speed broadband services in 2010 and, until the request that is under consideration here, obtained funding under the E-Rate program for eligible recurring charges for each of the funding years corresponding to the term of the Manti Contract. USAC's most recent approval of funding related to the Manti Contract was issued via FCDL dated July 2, 2014 (see <u>USAC Funding Commitment Decision Letter, July 2, 2014</u>, attached hereto and referred to herein as <u>Exhibit D</u>).

¹ NTIA National Broadband Map, Analyze & Summarize - www.broadbandmap.gov/summarize/state/utah

After multiple years of approving funding requests arising from the Manti Contract, including that approval in 2014, USAC denied UEN's 2015 funding request. <u>Exhibit A</u>. USAC's stated basis for denying UEN's funding request is that

[n]o contract or legally binding agreement was in place when the FCC Form 471 Certification was filed. FCC Rules require that a contract be signed and dated by the applicant or there be a legally binding agreement in place prior to the filing of the FCC Form 471 Certification for the products and services requested. <u>Id.</u>

That basis for denial appears to relate to a comment contained in the FCDL issued in conjunction with the 2014 approval of UEN's request for funding. Exhibit D. In conjunction with approving UEN's 2014 funding request, USAC stated

Your FRN has been approved. However, although block 7b of your Funding Year 2010 FCC Form 470 indicates you were seeking a contract with voluntary extensions, your contract does not include a definite end to the number of extensions. Program requirements do not allow for contracts with indefinite terms. Therefore, you must file a new FCC Form 470, evaluate your bids and sign a new contract with a finite contract term for the next Funding Year for which you will seek this service. <u>Id.</u>

Following USAC's denial of UEN's 2015 funding request, UEN appealed USAC's decision to the Administrator on November 25, 2015. Exhibit B. The Administrator's denial of UEN's appeal provided the following information related to the denial:

On the Funding Commitment Decision Letter (FCDL) for your FY2014 Application # 948771, FRN 2582055, you were advised that the Contract #W81991 you provided does not include a definite end to the number of extensions. Program requirements do not allow for contracts with indefinite terms since this practice violates competitive bidding rules of the program.

Additionally, you were advised that you must file a new FCC Form 470, evaluate your bids and sign a new contract with a finite contract term for the next Funding Year for which you will seek this service. This FRN was denied since you have referenced the same FCC Form 470 # 375320000790617, same Contract #W81991 and have not signed an acceptable contract per Program procedures. In your appeal, you did not demonstrate that

III. QUESTION FOR REVIEW AND DISCUSSION

UEN seeks review of the Administrator's statement that program requirements do not allow for funding to be issued with respect to eligible recurring charges under the Manti Contract, which contained a provision permitting voluntary extensions to the contract term.

UEN requests that the FCC reverse the USAC Administrator's denial of UEN's appeal and grant the funding that was originally denied by USAC. USAC should have granted UEN's funding request related to the Manti Contract because: (i) the Manti Contract is a valid acceptable contract for eligible recurring charges; (ii) applicable regulations do not require that a contract be rebid after a period of permissive renewals; and (iii) USAC does not have authority to impose requirements not present in applicable regulations.

First, the Manti Contract constitutes an acceptable contract under which reimbursement for eligible recurring charges is proper. The Manti Contract has, for years, been accepted as a valid contract for reimbursement under program requirements. USAC issued funding for the duration of that contract, through 2014, before imposing requirements for which UEN can find no regulatory justification. The funding request for 2015 should have been granted, as it was in prior years, on the basis that it stated a proper request for reimbursement of eligible recurring charges.

Second, USAC has imposed funding requirements that are not supported by applicable regulations and, as a result, has withheld funding that properly should have been granted.

Applicable regulations do not support the demand by USAC that the Manti Contract be rebid in light of the fact that it may be permissively renewed without reference to a definite end-date.

Quite to the contrary, the FCC stated in its first and second E-Rate Modernization Orders that

"we [the FCC] do not adopt a maximum contract length" and that the FCC "allow[s]... applicants to enter into multi-year agreements..." The continued denial of UEN's funding request appears to be based on USAC imposing a demand without basis, and UEN not having met that demand. UEN has been unable to locate any authority to support USAC's demand that the underlying contract be re-bid following the 2014 funding year and guidance from the FCC indicates that no such authority exists.

Third, to the extent that USAC's denial is based instead on a generalized notion that contracts must be occasionally rebid, or rebid at USAC's demand, the applicable regulations again do not support USAC's position. The competitive bidding requirements set forth in the Code of Federal Regulations contain no such requirement. See 47 C.F.R. § 54.503. And the FCC's decisions on this point again do not support USAC's position: "[a]n applicant does not need to post a new FCC Form 470 [i.e., re-bid] each year when it has a multi-year contract or when exercising a contract's voluntary renewal provision if the applicant indicated that it was a seeking a contract with those terms when it originally filed the FCC Form 470." In re Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District Barberton, Ohio, et al., 23 FCC Rcd. 15526 (Oct. 30, 2008). Further, by regulation, USAC, "is prohibited from 'mak[ing] policy, interpret[ing] unclear provisions of the statute or rules, or interpret[ing] the intent of Congress." In re Incomnet, Inc., 463 F.3d 1064, 1072 (9th Cir. 2006) (quoting 47 C.F.R. § 54.702(c)). USAC's denial of UEN's funding request, and the Administrator's upholding of that denial are not supported by applicable regulation and are, in fact, contrary to applicable guidance on the matter. The FCC should reverse USAC's decision.

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² Fed. Commc'n Comm'n, FCC 14-99, Report and Order and Further Notice of Proposed Rulemaking ¶ 193 (July 11, 2014) [hereinafter Modernization Order].

³ Fed. Commc'n Comm'n, FCC 14-189, Second Report and Order and Order on Reconsideration ¶ 153 (Dec. 11, 2014) [hereinafter Second Modernization Order].

UEN notes, as a factual matter, that FRN 2729808 is for contracted services provided by a very small rural carrier (Manti Telephone Company) in a very rural part of the state of Utah. The services provide an integral state network backbone interconnection among a variety of UEN contracted vendors serving, interconnecting, and aggregating state WAN connections for South Sanpete, North Sanpete, Sevier, Piute, Garfield, and Wayne county school districts. In 2015, UEN sought, in its procurement process, to identify a complete replacement service contract for this vendor's essential segment of the network, but was unsuccessful. Accordingly, UEN's extension of the contract between UEN and Manti Telephone Company was not an attempt to avoid the competitive bidding process, but was rather a necessary means to ensuring continued provision of services to an otherwise underserved area. Though not applicable at the time of 2015 application review, UEN has identified a new service provider who can offer a better solution for the provision of services to this area and a new contract is currently under negotiation for 2016 procurement.

Finally, UEN also notes that, while not apparently required under applicable E-Rate regulations, changes in Utah State procurement rules have prompted UEN to set fixed terms for its contracts. In light of these changes to Utah law, UEN has been systematically executing Memoranda of Understanding to set fixed extension terms for vendors with whom UEN had contracts that included indefinite extension terms. Relatedly, for future E-Rate procurements, when UEN executes new contracts with winning vendors resulting from competitive procurements, UEN intends to include terms of no longer than five years.

UEN's funding request should not be denied for reasons for which UEN can find no basis in either pre or post-modernization FCC rules. UEN has shown a commitment to fully compliant and robust competitive bidding processes, and the contract with Manti Telephone Company demonstrates that commitment. UEN has a record of success in advancing the goals of the E-

rate program, while adhering diligently to program rules and procedures. USAC's denial of funding in this instance has caused undue administrative burden for UEN and harm to the members of the public served by UEN.

IV. REQUEST FOR RELIEF

The FCC should reverse the Administrator's decision denying UEN's appeal and award the funding requested by UEN. Relief is appropriate pursuant to 47 C.F.R. 54.1, 54.501-502, 54.719, and related statutes and regulations.

Sincerely,

Sabrina Scott

Utah State E-rate Coordinator Utah Education and Telehealth Network 101 Wasatch Dr. Salt Lake City, UT 84112

Salmin Sister

e: sabrina.scott@utah.edu

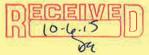
enc: A) USAC Funding Commitment Decision Letter, October 1, 2015

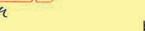
- B) Utah Education Network Appeal of USAC Funding Commitment Decision, November 25, 2015
- C) USAC Administrator's Decision on Appeal, January 21, 2016
- D) USAC Funding Commitment Decision Letter, July 2, 2014
- E) Contract between UEN and Manti Telephone Co.
- F) Request for Waiver and Certificate of Service

cc: Manti Telephone Company Universal Service Administrative Company, Schools and Libraries Division

Exhibit A







Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER (Funding Year 2015: 07/01/2015 - 06/30/2016)

October 1, 2015

Sabrina Scott UTAH EDUCATION NETWORK 101 WASATCH DRIVE SALT LAKE CITY, UT 84112

Re: FCC Form 471 Application Number: 1004867

Billed Entity Number (BEN): 150246 Billed Entity FCC Registration Number (FCC RN): 0011938024 Nickname: UEN 2015 Manti CG OG

Thank you for your Funding Year 2015 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the FCC Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$35,368.20 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation and Children's Internet Protection Act and Technology Plan Certification Form. A guide that provides a definition for each line of the Report is available in the Guide to USAC Letter Reports in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full.

Review Children's Internet Protection Act (CIPA) requirements. File FCC Form 486.

- Invoice USAC using the FCC Form 474, Service Provider Invoice (SPI) Form, or FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, as products and services are being delivered and billed.

TO APPEAL THIS DECISION:

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

- 1. Include the name, address, telephone number, fax number, and email address for the person who can most readily discuss this appeal with us.
- 2. State outright that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., FCDL) and the decision you are appealing:

- Appellant name,

- Applicant name and service provider name, if different from appellant,
- Applicant BEN and Service Provider Identification Number (SPIN),
- FCC Form 471 Application Number 1004867 and the Funding Request Number (FRN) or Numbers as assigned by USAC, "Funding Commitment Decision Letter for Funding Year 2015," AND

- The exact text or the decision that you are appealing.

- 3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
- 4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
- 5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.orgr submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal Schools and Libraries Division - Correspondence Unit 30 Lanidex Plaza West PO Box 685 Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, please see "Appeals" in the Schools and Libraries section of the USAC website.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program.

If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion please refer to Disposal or Trade-in of Equipment posted in the Reference Area of our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds.

Schools and Libraries Division Universal Service Administrative Company

10/01/2015

FUNDING COMMITMENT REPORT Billed Entity Name: UTAH EDUCATION NETWORK BEN: 150246

Funding Year: 2015



The applicant did not submit any RAL corrections.

FCC Form 471 Application Number: 1004867

Funding Request Number: 2729808

Funding Status: Not Funded
Service Type: Telecommunications Service
FCC Form 470 Application Number: 375320000790617
SPIN: 143002567

Service Provider Name: Manti Telephone Company

Contract Number: W81991
Billing Account Number: N/A
Service Start Date: 07/01/2015
Service End Date: N/A

Contract Award Date: 02/10/2010

Contract Expiration Date: 06/30/2016

Shared Worksheet Number:

Number of Months Recurring Service Provided in Funding Year: 12 Annual Pre-discount Amount for Eligible Recurring Charges: \$50,526.00 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00

Pre-discount Amount: \$50,526.00

Discount Percentage Approved by the USAC: 70% Funding Commitment Decision: \$0.00 - Contract Violation

Funding Commitment Decision Explanation: DR1: No contract or legally binding agreement was in place when the FCC Form 471 Certification was filed. FCC Rules require that a contract be signed and dated by the applicant or there be a legally binding agreement in place prior to the filing of the FCC Form 471 Certification for the products and services requested.

FCDL Date: 10/01/2015 Wave Number: 019

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2016

Consultant Name:

Consultant Registration Number (CRN):

Consultant Employer:



Exhibit B

APPEAL of USAC Funding Commitment Decision 2015 App 1004867, FRN 2729808

To: Universal Service Administrative Company, Schools and Libraries Program

From: Utah Education Network, BEN 150246

Contact: Sabrina Scott, Utah State E-rate Coordinator

101 Wasatch Dr., Salt Lake City, UT 84112

Ph: 801-581-3019 Fax: 801-585-3969

Email: Sabrina.scott@utah.edu

Re: Appeal of Funding Commitment Decision for Funding Year 2015 application 1004867, FRN

2729808

SPIN/SP: 143002567, Manti Telephone Company

Dear Administrator,

This letter constitutes an appeal of the Funding Commitment Decision Letter dated October 1, 2015, related to the above-referenced FRN, in which the Universal Service Administrative Company (USAC) denied the correspondent funding request of the Utah Education Network (UEN). We request that USAC reverse its decision denying UEN's request and approve funding in the requested amount (\$35,883.57).

The exact text of the denial set forth in the Funding Commitment Decision Letter is as follows:

DR1: No contract or legally binding agreement was in place when the FCC Form 471 Certification was filed. FCC Rules require that a contract be signed and dated by the applicant or there be a legally binding agreement in place prior to the filing of the FCC Form 471 Certification for the products and services requested.

A legally binding agreement was in place and provided to reviewers during the course of application review. Accordingly, FRN 2729808 should have been approved.

We respectfully request that USAC reconsider the commitment decision and issue a revised commitment decision for the requested amount (\$35,883.57) under the terms of the vendor agreement, expiring on June 30, 2016.

Please refer to the attached documentation supporting our appeal of this decision.

If you have any questions, please do not hesitate to call or email me or Sabrina Scott, the designated contact for this matter, using the contact information set forth above.

Very truly,

Dr. Ray Timothy
Executive Director and CEO

Utah Education and Telehealth Network 101 Wasatch Dr. Salt Lake City, UT 84112

Phone: 801-581-6991 rtimothy@uen.org

CC: Manti Telephone Company

Enclosed: Funding Commitment Decision Letter, Vendor Agreement

Exhibit C



Universal Service Administrative Company

Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2015-2016

January 21, 2016

Dr. Ray Timothy Utah Education and Telehealth Network 101 Wasatch Drive Salt Lake City, UT 84112



Re: Applicant Name:

UTAH EDUCATION NETWORK

Billed Entity Number: Form 471 Application Number: 150246 1004867

Funding Request Number(s):

2729808

Your Correspondence Dated:

November 25, 2015

After review of the information and documentation provided, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's funding commitment decision for the FCC Form 471 Application Number and funding requests number(s) (FRN(s)) referenced above. This letter provides an explanation for USAC's decision. The date of this letter also begins the sixty (60) day time period for appealing this decision. If your Letter of Appeal included more than one FCC Form 471 Application Number, please note that you will receive a separate decision for each funding application.

Funding Request Number(s):

2729808

Decision on Appeal:

Denied

Explanation:

On the Funding Commitment Decision Letter (FCDL) for your FY2014
Application # 948771, FRN 2582055, you were advised that the Contract #
W81991 you provided does not include a definite end to the number of
extensions. Program requirements do not allow for contracts with indefinite terms
since this practice violates competitive bidding rules of the program.
Additionally, you were advised that you must file a new FCC Form 470, evaluate
your bids and sign a new contract with a finite contract term for the next Funding
Year for which you will seek this service. This FRN was denied since you have
referenced the same FCC Form 470 # 375320000790617, same Contract #
W81991 and have not signed an acceptable contract per Program procedures. In
your appeal, you did not demonstrate that USAC's decision was incorrect.
Consequently, your appeal is denied.

If you wish to appeal this decision, you may file an appeal pursuant to 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at: http://www.usac.org/sl/about/program-integrity/appeals.aspx.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division Universal Service Administrative Company

Exhibit D



FUNDING COMMITMENT DECISION LETTER (Funding Year 2014: 07/01/2014 - 06/30/2015)

July 2, 2014

Sabrina Scott UTAH EDUCATION NETWORK 101 WASATCH DRIVE SALT LAKE CITY, UT 84112

Re: FCC Form 471 Application Number: 948771 Billed Entity Number (BEN): 150246 Billed Entity FCC Registration Number (FCC RN): 0011938024 Applicant's Form Identifier: UEN 2014 Manti OG

Thank you for your Funding Year 2014 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the FCC Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$109,491.25 is "Approved."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Guide to USAC Letter Reports in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full. Review technology planning approval requirements.
 Review Children's Internet Protection Act (CIPA) requirements.

File FCC Form 486. Invoice USAC using the FCC Form 474, Service Provider Invoice (SPI) Form, or FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, - as products and services are being delivered and billed.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address for the person who can most readily discuss this appeal with us.

> Schools and Libraries Division - Correspondence Unit 30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685 Visit us online at: www.usac.org/sl

 State outright that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., FCDL) and the decision you are appealing: - Appellant name.

- Applicant name and service provider name, if different from appellant,

- Applicant BEN and Service Provider Identification Number (SPIN),
- FCC Form 471 Application Number 948771 and the Funding Request Number (FRN) or Numbers as assigned by USAC,

- "Funding Commitment Decision Letter for Funding Year 2014," AND

- The exact text or the decision that you are appealing.

- 3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
- 4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
- 5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.orgr submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal Schools and Libraries Division - Correspondence Unit 30 Lanidex Plaza West PO Box 685 Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, please see "Appeals" in the Schools and Libraries section of the USAC website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in Appeals in the Schools and Libraries section of our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to Disposal or Trade-in of Equipment posted in the Reference Area of our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

FCDL/Schools and Libraries Division/USAC

Page 2 of 5

07/02/2014

Schools and Libraries Division Universal Service Administrative Company



00353

FUNDING COMMITMENT REPORT Billed Entity Name: UTAH EDUCATION NETWORK BEN: 150246

Funding Year: 2014

Comment on RAL corrections: The applicant did not submit any RAL corrections.

FCC Form 471 Application Number: 948771 Funding Request Number: 2582055

Funding Status: Funded

Category of Service: Telecommunications Service FCC Form 470 Application Number: 375320000790617

SPIN: 143002567

Service Provider Name: Mantí Telephone Company

Contract Number: W81991

Billing Account Number: N/A

Multiple Billing Account Numbers: N Service Start Date: 07/01/2014

Service End Date: N/A

Contract Award Date: 02/10/2010 Contract Expiration Date: 06/30/2015

Shared Worksheet Number: 1639107

Number of Months Recurring Service Provided in Funding Year: 12 Annual Pre-discount Amount for Eligible Recurring Charges: \$128,053.20 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00

Pre-discount Amount: \$128,053.20

Discount Percentage Approved by the USAC: 77%

Funding Commitment Decision: \$98,600.96 - FRN approved; modified by SLD

Funding Commitment Decision Explanation: Your FRN has been approved. However, although Block 7b of your Funding Year 2010 FCC Form 470 indicates you were seeking a contract with voluntary extensions, your contract does not include a definite end to the number of extensions. Program requirements do not allow for contracts with indefinite terms. Therefore, you must file a new FCC Form 470, evaluate your bids and sign a new contract with a finite contract term for the next Funding Year for which you will seek this service.

FCDL Date: 07/02/2014 Wave Number: 008

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2015

Consultant Name:

Consultant Registration Number (CRN):

Consultant Employer:

FUNDING COMMITMENT REPORT Billed Entity Name: UTAH EDUCATION NETWORK BEN: 150246

Funding Year: 2014

Comment on RAL corrections: The applicant did not submit any RAL corrections.

FCC Form 471 Application Number: 948771

Funding Request Number: 2582058

Funding Status: Funded

Category of Service: TelecommunicationsService FCC Form 470 Application Number: 375320000790617 SPIN: 143002567

Service Provider Name: Manti Telephone Company

Contract Number: W81991 Billing Account Number: N/A Multiple Billing Account Numbers: N Service Start Date: 07/01/2014 Service End Date: N/A Contract Award Date: 02/10/2010

Contract Expiration Date: 06/30/2015 Site Identifier: 16057449

Number of Months Recurring Service Provided in Funding Year: 12 Annual Pre-discount Amount for Eligible Recurring Charges: \$12,100.32 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00

Pre-discount Amount: \$12,100.32

Discount Percentage Approved by the USAC: 90% Funding Commitment Decision: \$10,890.29 - FRN approved; modified by SLD Funding Commitment Decision Explanation: Your FRN has been approved. However, although Block 7b of your Funding Year 2010 FCC Form 470 indicates you were seeking a contract with voluntary extensions, your contract does not include a definite end to the number of extensions. Program requirements do not allow for contracts with indefinite terms. Therefore, you must file a new FCC Form 470, evaluate your bids and sign a new contract with a finite contract term for the next Funding Year for

which you will seek this service.

FCDL Date: 07/02/2014 Wave Number: 008

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2015

Consultant Name:

Consultant Registration Number (CRN):

Consultant Employer:



00353

Exhibit E

MARITI	TELEPHONE
W	81991

Agreement	Number	
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WIDE AREA NETWORK SERVICE AND SUPPORT AGREEMENT

THIS WIDE AREA NETWORK SERVICE AND SUPPORT AGREEMENT is executed as of this 10th day of February, 2010 (the "Agreement"), by and between MANTI TELEPHONE COMPANY, a Utah corporation, located at 40 West Union, Manti, Utah 84624 (hereinafter referred to as the "PROVIDER"), and the UNIVERSITY OF UTAH, a body politic and corporate of the State of Utah, on behalf of its UTAH EDUCATION NETWORK, Eccles Broadcast Center, 101 Wasatch Drive, Salt Lake City, Utah 84112-1792 (hereinafter referred to as the "CUSTOMER"), each a "Party" and, collectively, the "Parties".

WITNESSETH

WHEREAS, CUSTOMER desires that PROVIDER provide certain telecommunications services to the locations identified on Exhibit A for use thereof by CUSTOMER to provide certain Gig-E or other broadband data services (the "SERVICES") to public education and library facilities located in PROVIDER's service territory, and

WHEREAS, the SERVICES are fully supported end-to-end service offerings designed to address the unique needs of the education community for inter-school communications and data network access; and

WHEREAS, PROVIDER is willing to provide the SERVICES, subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises recited above, and the mutual covenants, conditions and promises contained herein, the Parties hereby agree as follows:

- 1. Service Description: PROVIDER shall provide the SERVICES to the locations described in Exhibit A, for the use by CUSTOMER as provided in Section 6 hereof. CUSTOMER shall use the SERVICES strictly in compliance with the terms and conditions of this Agreement. CUSTOMER acknowledges that the SERVICES provided hereunder shall include only those described on Exhibit A attached hereto and that CUSTOMER shall have no right to any additional services unless PROVIDER and CUSTOMER mutually consent to such additional facilities and services and CUSTOMER and PROVIDER execute an addendum to this Agreement with respect to the use of such additional services. CUSTOMER acknowledges that PROVIDER will also utilize any facilities used in connection with the provision of the SERVICES for PROVIDER's use in its business operations, without limitation or restriction, except that such use shall not interfere with CUSTOMER's use of the SERVICES.
- 2. Term: This Agreement shall commence on July 1, 2010, and remain in full force and effect through June 30, 2013 (initial term), and shall not be terminated during the initial term except as provided in Section 4 or Section 14 or elsewhere in this Agreement.
- 3. Term Extension: After the initial term, unless earlier terminated as provided herein, this Agreement shall automatically continue for successive one-year renewal term(s) of one year each, unless either Party gives written notice of its intent to terminate this Agreement by providing written notice to the other Party not less than ninety (90) days' prior to the expiration of then-current term.

4. SLD Funding:

- a. CUSTOMER agrees to apply for E-Rate funding through the Federal Communications Commission (FCC), Universal Service Fund, Schools and Libraries Division (the state[district]-wide discount based on the Free and Reduced Lunch Program (FRLP)), to cover any qualified costs under this Agreement (the "SLD Funding"), and PROVIDER shall cooperate with CUSTOMER in connection with such.
- b. PROVIDER shall have no obligation to provide the Services, and commence construction of the facilities necessary for the provision thereof, unless and until (i) the SLD Funding request has been approved, in full, and (ii) the CUSTOMER is actually appropriated funds (which appropriation shall be evidenced by certification of the appropriating authority), in a total amount sufficient to cover the Total Upfront Costs identified on Exhibit A including improvements to the appropriate Central Offices [described on Exhibit A] (the "Upfront Costs") and the total Recurring Charges (as defined in Section 5 below) for the first year of the initial term of the Agreement at the rates set forth on Exhibit A. If at any time after the first year of the initial term of the Agreement, Customer is not appropriated funds to pay for the non-SLD eligible portion of the SERVICES, or is appropriated insufficient funds to pay for the non-SLD eligible portion of the SERVICES due under this Agreement, whether due to regulatory changes or program cancellation, or otherwise, or the SLD Funding is denied for the SLD eligible portion of the SERVICES, in whole or in part, then either Party shall have the right to terminate this Agreement upon written notice to the other Party, and upon such termination this Agreement shall be null and void and neither Party shall have any liability or obligation under this Agreement, including, without limitation, liability for any Termination Charges; provided, however, that if in any year following the first year of the initial term of this Agreement SLD Funding and the CUSTOMER's appropriated fund are sufficient to cover the Recurring Charges for the SERVICES, in full, then neither Party shall have the right to terminate this Agreement under this Section 4.b.
- c. PROVIDER will make reasonable good faith efforts to provide the Services on CUSTOMER's requested due date but in any event not more than 1 year after CUSTOMER has notified PROVIDER of receipt of SLD Funding and appropriation of funds for the non-SLD eligible portion of the costs; provided, however, that any delay with respect to the availability of the Services shall not create any liability on the part of PROVIDER or give rise to any right on the part of CUSTOMER to terminate this Agreement under Section 14 hereof so long as PROVIDER is diligently prosecuting the completion of the construction of the Facilities. The Services will begin on the date that CUSTOMER has received notification indicating that the Services have been tested by PROVIDER and are ready for use and CUSTOMER has accepted the Services (the "Service Date").
- d. PROVIDER and CUSTOMER acknowledge and agree that the costs represented in Exhibit A attached hereto have been averaged to demonstrate the feasibility of providing the SERVICES hereunder, based on the assumption that all the facilities described on Exhibit A will be completed in their entirety. If individual sites constituting less than all of the sites described on Exhibit A hereto are selected for completion, the CUSTOMER shall fund the Upfront Costs, and pay the Recurring Charges, for such individual sites based on the "per site" development costs and recurring charges described in Exhibit A for each individual site.

- 5. Recurring Charges: CUSTOMER shall pay PROVIDER for non-recurring charges for Upfront Costs, upon presentation by PROVIDER of an invoice(s) for the construction of the Facilities or discrete portions thereof. CUSTOMER shall pay to PROVIDER invoiced amounts for the SERVICES rendered on and after the Service Date, without any right of set-off or counterclaim, at the rates set forth on Exhibit A (the "Recurring Charges"). In addition, CUSTOMER shall pay any applicable taxes or surcharges. CUSTOMER is exempt from State of Utah sales and excise taxes. PROVIDER acknowledges receipt of CUSTOMER's exemption certificate(s), available http://www.purchasing.utah.edu/forms/. All amounts stated on each monthly invoice shall be due and payable upon receipt thereof. Charges that are not paid for a period of thirty (30) days following the receipt of invoices shall be subject to interest from the date of the receipt of the invoice at the rate that is the lesser of eighteen percent (18%) per annum or the maximum rate allowed by applicable law. No late fee, finance charge or interest shall be charged or accrue to CUSTOMER on any amount for so long as there exists a good faith dispute between PROVIDER and CUSTOMER as to such amount. In the event PROVIDER prevails with respect to any such dispute, PROVIDER shall be entitled to interest on said disputed amount at the rate hereinabove specified. Said payment shall be paid on or before the beginning of each calendar month during the initial term and any renewal periods of this Agreement.
- 6. Use of SERVICES; Limitation on Use: PROVIDER acknowledges and agrees that the Utah Education Network provides services to public and higher education, libraries, and certain other public entities and individuals generally affiliated therewith ("UEN Customers"). PROVIDER acknowledges that CUSTOMER is purchasing the Services in order to provide the Services to UEN Customers only. The Parties agree that nothing in this Agreement shall be deemed or construed to prohibit CUSTOMER from providing the Services purchased under this Agreement to UEN Customers; provided, however, during the term of this Agreement, UEN shall not expand those receiving Services purchased under this Agreement to include facilities of county or state government or other public entities that are not receiving SERVICES within PROVIDER's service territory as UEN Customers as of the date of this Agreement. The Parties agree that: (a) CUSTOMER shall not use the SERVICES, or any facilities of the PROVIDER employed in connection with the provision of the SERVICES, in violation of this Agreement, any law, rule, regulation or order of any governmental authority having jurisdiction or any franchise, license, agreement or certificate relating to the SERVICES provided hereunder hereunder or to use the SERVICES, or any facilities of the PROVIDER employed in connection with the provision of the SERVICES, to resell or license the SERVICES to another party other than UEN Customers or otherwise permit any another party other than the UEN Customers to utilize the SERVICES or any facilities of the PROVIDER employed in connection with the provision of the SERVICES, for any purpose and shall only use the SERVICES, or any facilities of the PROVIDER employed in connection with the provision of the SERVICES, for transmission of Utah Education Network's telecommunications services. Subject to the foregoing, CUSTOMER shall have unrestricted use of the SERVICES for the transmission of telecommunications services for its own use and use by UEN Customers; (b) public libraries may connect to the network but such connection shall be made only through the facilities of the PROVIDER, provided, however, that PROVIDER shall have the first right of refusal to provide all Off-Premise-Extensions (OPX) of the Services; (c) CUSTOMER may use the SERVICES for voice-over-internet telecommunications services subject to the prohibitions on licensing, reselling or use by other parties described in Section 6(a) above provided, however, that CUSTOMER shall subscribe to local loops provided by the PROVIDER for such voice-over-internet services; provided, further, that prior to the initiation of any voice-over-internet telecommunications services by CUSTOMER, CUSTOMER shall first notify PROVIDER of its intent to utilize voice-over-internet telecommunications services

and give PROVIDER a right of first refusal to provide any call management services or hardware associated therewith at comparable terms and conditions which a third-party vendor would provide. PROVIDER will not generate for its own use and/or store any LOG Files with respect to the SERVICES.

- 7. Performance and Maintenance: PROVIDER shall, at its own expense, maintain the SERVICES so that at all times the SERVICES perform in accordance with this Agreement. In the event of an interruption in the SERVICES, CUSTOMER will inspect all equipment connections and components installed by CUSTOMER to ensure such failure is not caused by CUSTOMER's equipment, connections, or components. If CUSTOMER determines that the failure is not caused by CUSTOMER's equipment connections, or components, CUSTOMER will notify the PROVIDER of the failure, and PROVIDER shall use its best effort to restore said service within four (4) hours following such notification, excepting service interruptions caused by any circumstance described in Section 13.
- **8. CUSTOMER Obligations**: In addition to the obligations of CUSTOMER set forth elsewhere in this Agreement, CUSTOMER shall:
 - 1. Have full and complete control, responsibility, and liability for the content distributed by CUSTOMER over the SERVICES;
 - 2. Have full and complete control, responsibility, and liability for the purchase, installation, construction, and maintenance of the terminals and peripheral equipment connected to any facilities of the PROVIDER employed in connection with the provision of the SERVICES, and used by the CUSTOMER;
 - 3. Employ its own employees, agents, and/or independent contractors in the handling, storage, retrieval, processing, transmitting, and/or receiving of any signals distributed by CUSTOMER utilizing the SERVICES;
 - 4. Provide all commercial or other power supplies for the operation terminals, and peripheral or other equipment used in connection with the SERVICES which are located on CUSTOMER's premises.

Notwithstanding the foregoing, PROVIDER acknowledges that the provision of the SERVICES is a cooperative effort between PROVIDER and CUSTOMER, and thus, PROVIDER agrees to allow CUSTOMER to have physical and logical access, including "enable password" to all network hardware located on CUSTOMER's premises that are associated with the "finished service" described herein. Failure to all such access would result in cause for termination of this Agreement by CUSTOMER without penalty.

- 9. Title: All title, right and interest in any facilities of the PROVIDER employed in connection with the provision of the SERVICES under the provisions of this Agreement shall at all times remain exclusively the property of PROVIDER. All title, right and interest in all associated equipment provided by CUSTOMER shall, at all times, remain exclusively the property of CUSTOMER.
- 10. Interruption of Service: In the event the SERVICES are interrupted by other than a force majeure event, as defined in Section 13, or a failure of CUSTOMER's equipment connections, or components, and PROVIDER is unable to restore the SERVICES within six (6) hours, CUSTOMER shall be entitled to a credit equal to the number of hours and fractional portions thereof of outage times 1/720 of the applicable monthly charge. Each interruption is considered separately for the purpose of establishing any credit allowance. If

access by PROVIDER to any facilities of the PROVIDER employed in connection with the provision of the SERVICES is denied by CUSTOMER, PROVIDER shall have twenty-four (24) hours to restore SERVICES, from the time permission is granted by said authorities to access such facilities, before CUSTOMER shall be entitled to any credit hereunder. In the event two or more SERVICE interruptions in excess of 2 hours each occur in a 30-day period, and the cause(s) of the SERVICE interruption is determined to be with the reasonable control of the PROVIDER, such interruptions will be deemed a chronic trouble service condition. If a third (3rd) SERVICE interruption event in excess of 2 hours occurs within fifteen (15) days of the second (2nd) Service interruption event, CUSTOMER may disconnect the affected Service with respect to the specific circuit which has experienced the SERVICE interruptions without incurring any termination charges or penalty. If any outage is sustained for 24 hours within a one-day period and is determined to be in reasonable control of the PROVIDER, CUSTOMER may disconnect the affected Service with respect to the specific circuit which has experienced the SERVICE interruptions without incurring any termination charges or penalty. Notwithstanding the foregoing, the CUSTOMER shall not have the right to disconnect Services in the event such interruptions are caused, in whole or in part, by a Force Majeure event, or by the actions of third parties, which result in the damage to, or destruction of, facilities used by PROVIDER to provide the SERVICES.

- 11. Service Calls: When CUSTOMER refers service problems to PROVIDER for resolution and the problem is determined not to be in PROVIDER's systems or services, the PROVIDER may charge CUSTOMER for the service call at rate of \$67.50 per hour.
- **12. Facilities Modification**: Should relocation or replacement of a portion of the FACILITIES be necessary to meet a change in CUSTOMER's needs, all costs of relocation and/or replacement shall be paid by CUSTOMER in an amount not to exceed PROVIDER's direct costs plus 10%.
- 13. Force Majeure: Neither party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control, including but not limited to: acts of God, fire, flood, or other catastrophes; any law, order, regulatory direction action or request of the United States Government, or any other government including state and local governments having or claiming jurisdiction over such party, or of any department agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state or local governments, or of any civil military authority; national emergencies, unavailability of materials; insurrections; riots; wars, or strikes, lock-outs, work stoppages or other difficulties (collectively, "force majeure events").

14. Termination:

The following termination rights are in addition to the termination rights of the Parties set forth in other sections of this Agreement.

- a. PROVIDER shall have the right, at its option, to terminate this Agreement if CUSTOMER fails to pay any nonrecurring or recurring charges and such failure is not cured within thirty (30) days following written notice to CUSTOMER of such delinquency.
- b. Either Party shall have the right to terminate this Agreement if the other Party breaches a material term of this Agreement (other than those described above) and such breach is not cured within thirty (30) days following notice thereof.
- c. PROVIDER shall have the right to immediately terminate this Agreement upon written notice to CUSTOMER if CUSTOMER violates or breaches the terms and conditions of Section 6 hereof.
- d. In the event this Agreement is terminated by CUSTOMER, without cause, or by PROVIDER, as a result of a breach by CUSTOMER, CUSTOMER shall pay a lump sum termination charge equal to one hundred percent (100%) of the monthly

recurring charges described in Section 5 hereof for any unexpired months remaining in the initial term or any renewal period (the "Termination Charges"). Notwithstanding the foregoing, no Termination Charges shall be payable by CUSTOMER if this Agreement is terminated pursuant to the Sections of this Agreement entitled "SLD Funding" or "NATIONAL TELECOMMUNICATIONS and Information Administration (NTIA) Broadband Technology Opportunities Program (BTOP)".

- 15. Regulatory Authority: This Agreement shall not become effective until approved by the Public Service Commission of Utah ("PSCU"), if such approval is required. The Parties agree to comply with all current and future federal, state and local laws, and the regulations and rules of any regulatory authority having jurisdiction over the Parties or the subject matter of this Agreement including, without limitation, any orders, rules or regulations of the FCC, and tariffs resulting therefrom, with respect to the application of access charges to voice-over-internet telecommunications services. Each Party further agrees to indemnify the other Party for any loss or damages that may be sustained by reason of such Party's failure to comply with the aforementioned federal, state and local laws, regulations and rules.
- 16. Red Light Rule of the FCC. The FCC has adopted 47 C.F.R. §1.1910 which is referred to by the FCC as the "red light rule" that currently provides that the FCC shall withhold action on any application or request for benefits made by an entity that is delinquent in its non-tax debts owed to the FCC and shall dismiss such applications or requests if the delinquent debt is not resolved. PROVIDER represents and warrants that as of the date of this Agreement, to the best of PROVIDER's knowledge after due inquiry, PROVIDER is not in violation of the "red light rule". PROVIDER agrees to take all commercially reasonable actions necessary to remain in compliance with the "red light rule" throughout the Service term. PROVIDER agrees to notify CUSTOMER immediately in the event the FCC notifies PROVIDER during the Service term that such entity is in violation of the "red light rule." Notwithstanding any provision to the contrary herein, and in addition to CUSTOMER's other rights under the Agreement or at law or in equity, if CUSTOMER's application or request for benefits to which it is entitled is denied as a direct result of PROVIDER'S violation of the "red light rule" and PROVIDER fails to resolve such alleged violation to the satisfaction of the FCC (as evidenced by written notice from the FCC to that effect or other reliable proof) within thirty (30) calendar days of PROVIDER's receipt of written notice from the CUSTOMER or from the SLD of the SLD's denial of such application or request ("Cure Period"), then CUSTOMER shall have the right, but not the obligation, to terminate this Agreement without any liability to PROVIDER whatsoever (including, without limitation, any liability for Termination Charges) except for payment for Services provided prior to the termination of this Agreement.
- 17. Governing Law: This Agreement shall be governed by the laws of the State of Utah.
- 18. Assignment: Neither this Agreement nor rights or obligations of the CUSTOMER or PROVIDER shall be transferable or assignable by either Party without the other Party's written consent, such consent not being unreasonably withhold; provided however, either Party may assign and transfer this Agreement to any parent, subsidiary, successor or affiliated company upon prior written consent of the other Party and; provided further, assignee of CUSTOMER may be required to render a deposit against future service payments if assignee does not meet PROVIDER credit standards.

19. Limitation of Liability: NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY FAILURE OR DELAY IN ITS PERFORMANCE HEREUNDER, OR FOR ANY PERFORMANCE WHICH IS SUBSTANDARD, EXCEPT AS EXPRESSLY PROVIDED HEREIN; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL **DAMAGES** WHATSOEVER INCLUDING, WITHOUT LIMITATION, ANY CLAIMS FOR ANY DAMAGE TO OR LOSS OF REVENUES, PROFITS, BUSINESS OR GOODWILL.

20. Indemnification:

- a. CUSTOMER shall hold harmless, defend and indemnify PROVIDER, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgments, losses, damages, and liabilities to persons or property (including all reasonable costs and reasonable attorney's fees incurred in defending any claim, demand, or cause of action) arising or resulting from (a) any breach of this Agreement by CUSTOMER or CUSTOMER's officers, agents, or employees, (b) any negligent acts or omissions or CUSTOMER, its officers, agents, or employees, (c) use of the SERVICES by CUSTOMER in violation of this Agreement, or (d) any claims of patent, copyright or trademark infringement arising because Customer has used, connected or combined the Services with the infringing products and services of others.
- b. PROVIDER shall hold harmless, defend and indemnify CUSTOMER and the University of Utah and its officers, employee, and agents from and against any and all claims (including, without limitation, third party claims), losses, causes of action, judgments, damages and expenses, including, but not limited to, reasonable attorney's fees (collectively, "Claims"), because of bodily injury or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of: (a) breach of the Agreement by PROVIDER, or (b) any negligence, or willful misconduct on the part of PROVIDER, or its agents, employees, or subcontractors.
- Notwithstanding any provision to the contrary in this Agreement, the limitations of liability contained in Section 19 of this Agreement shall not apply to PROVIDER's indemnification obligations hereunder for (i) any Claims brought by third parties or (ii) any Claims because of bodily injury or death or injury to or destruction of tangible property. Except for CUSTOMER'S right to indemnity as provided herein, CUSTOMER's sole remedy for damages under this Agreement shall be a credit against monthly payments. As a governmental entity of Utah, Customer is subject to the Utah Governmental Immunity Act of the Utah Code, Section 63G-7-101 et seq. of the Utah Code, as amended (the "Act"). Nothing in the Agreement or in any Service order shall be construed as a waiver of any rights or defenses applicable to CUSTOMER under the Act, and notwithstanding any provisions to the contrary in the Agreement, all indemnity, defense, and/or hold harmless obligations of CUSTOMER contained in the Agreement, as the same may be amended, are subject to the Act, are limited to the amounts established in Section 63G-7-604 of the Act, and are further limited only to claims that arise from the negligent acts or omissions of CUSTOMER. It is not CUSTOMER's intent to incur by contract any liability for the negligent operations, acts, or omissions of PROVIDER or any third party (including, without limitation, any UEN Customer) and nothing in this Agreement shall be so construed.
- d. CUSTOMER acknowledges that material accessible through the use of the SERVICES provided hereunder may be subject to protection under federal and state copyright and other laws, rules and regulations that protect copyrighted materials, patents, trademarks, trade secrets or other proprietary information ("Proprietary Information"). CUSTOMER agrees that upon written notification that a UEN Customer or any third party

user is using the SERVICES in violation of any such federal and state laws, rules and regulations by downloading, storing or distributing, or making available for distribution, the Proprietary Information, CUSTOMER shall take appropriate action to take down or block access to the Proprietary Information in accordance with 17 USC §512; provided, however, that any breach by CUSTOMER of this Section 20.d. shall not result in any liability on the part of CUSTOMER to PROVIDER nor shall PROVIDER be entitled to indemnification from CUSTOMER under the terms of this Section 20 on account thereof.

- 21. Use of Either Party's Name: Neither CUSTOMER nor PROVIDER will use the name of the other Party for any marketing purpose in any form without prior written approval of the other Party. Said approval will not be unreasonably withheld, provided said use does not conflict with the Party's guidelines and/or policies.
- 22. Notices: All notices, requests, demands, invoices, statements, reports and other communications under this agreement shall be in written form and delivered to

For PROVIDER, to:

Paul Cox

General Manager

MANTI TELEPHONE Company

40 West Union Manti, UT 84642

(435) 835-3391 E-mail: paul@manti.com For CUSTOMER, to:

Dennis Sampson

Network Administration Utah Education Network

Eccles Broadcast Center

University of Utah 101 Wasatch Drive

Salt Lake City, UT 84112-1792

- 23. Elementary Schools Sites. UEN shall have the option in UEN's sole discretion at any time during the term of the Agreement to order the Services at the elementary school site(s) described in the Exhibit A. UEN does not anticipate ordering Service for any elementary school Site unless and until UEN has determined in its sole discretion that (i) UEN qualifies for SLD Funding with respect to Services for such site, and (ii) additional necessary funds, such as, but not limited to, reimbursement funds from schools and /or the school district, will be available to cover the costs thereof not covered by any SLD Funding.
- 24. Amendment: This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter hereof and can not be amended except by a written instrument executed by both Parties.
- 25. Costs of Enforcement: In the event of any action or suit based upon or arising out of any alleged breach by either Party of any representation, warranty, covenant or agreement contained in this Agreement, the prevailing Party (as determined by the court) shall be entitled to recover reasonable attorneys' fees and other costs of such action or suit from the other Party in addition to such other relief as to which such prevailing Party shall be entitled.
- 26. Purchase Order and UEN Written Authorization to Proceed PROVIDER agrees that receipt of a Purchase Order (P.O.) from the University of Utah does not constitute a Notice to Proceed or work authorization under the terms of this agreement. PROVIDER acknowledges that UEN must apply for and receive a federal e-rate funding commitment (FCDL) prior to authorization for any work or equipment orders under this agreement to be performed. PROVIDER agrees that in order to proceed on the work and equipment orders contained in this agreement, that a UEN authorized representative from the UEN Administration or UEN Technical Services Administration must give a written notice to proceed to the contact below from PROVIDER or his designee:

Paul Cox General Manager MANTI TELEPHONE COMPANY 40 West Union Manti, UT 84642

NATIONAL TELECOMMUNICATIONS and Information Administration (NTIA) 27. Broadband Technology Opportunities Program (BTOP). UEN has applied for funding under the American Reinvestment and Recovery Act ("ARRA") for the New 20mb WAN Services to the Youth in Customer facilities described on Attachment A to be provided under this Agreement. If such ARRA funding is approved, the rates and charges in this Agreement for such Services will be binding upon the parties so long as the conditions contained within such ARRA approval do not increase PROVIDER's costs of providing the Services. In the event ARRA is approved, this Agreement may be amended by the parties to add such specific terms, conditions and obligations associated with the ARRA funding and required by NTIA. Notwithstanding any provision to the contrary in the preceding sentence or elsewhere in this Agreement, if ARRA funding for such Services is not approved or if the parties fail to reach an agreement to amend this Agreement that complies with NTIA requirements for BTOP funding, for any reason, then such Services that would have been paid for with ARRA funding may be terminated by CUSTOMER or PROVIDER without liability for such termination or any other liability and PROVIDER shall have no obligation to provide those Services under this Agreement.

IN WITNESS WHEREOF the parties have caused this AGREEMENT to be duly executed upon the date set forth above.

MANTI TELEPHONEUTAH TELEPHONE ASSOCIATION, INC.

By: Harl Sox		
General Manager		
Date: 19 Mar 2010		
UNIVERSITY OF UTAH, ON BEHALF OF THE NETWORK	UTAĤ	EDUCATION
By: fulta		
Its: EXECUTIVE DIRECTOR		
Date: 2-10-10		
By: Stephen /6:/fem		
Its: Cio		

EXHIBIT B

Insurance. Provider shall maintain Commercial General Liability insurance with per occurrence limits of at least \$1,000,000 and general aggregate limits of at least \$2,000,000. Provider shall also maintain, if applicable to Provider's operations or performance of this contract, Business Automobile Liability insurance covering Provider's owned, non-owned, and hired motor vehicles and/or Professional Liability (errors and omissions) insurance with liability limits of at least \$1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by Customer.

Provider shall maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees or volunteers involved in performing services pursuant to this Agreement. Provider shall also maintain "all risk" property insurance at replacement cost applicable to Provider's property or its equipment.

Provider's insurance carriers and policy provisions must be acceptable to the University's Risk and Insurance Manager and remain in effect for the duration of the Agreement. The University of Utah shall be named as an additional insured on the Commercial General Liability insurance policy. Provider will cause any of its subcontractors, who provide materials or perform services relative to this contract, to also maintain the insurance coverages and provisions listed above.

Provider shall submit certificates of insurance as evidence of the above required coverage to Customer prior to the commencement of this Contract (mail to: University of Utah Purchasing Department, Attn: Becca Morley, 1901 E. South Campus Drive Rm. 151, Salt Lake City, UT 84112-9351). Such certificates shall provide the University with thirty (30) calendar day's written notice prior to the cancellation or material change of the applicable coverage, as evidenced by return receipt or certified mail, sent to the above address.

- 2.0 Record Keeping and Audit Rights. Provider shall maintain accurate accounting records for all goods and services provided under this Agreement, and shall retain all such records for a period of at least five (5) years following the expiration or earlier termination of this Agreement. Upon reasonable notice and during normal business hours, and in connection with any requirements imposed by federal or state regulatory agencies, Customer, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the Agreement. The University's audit rights shall extend throughout the term of the Agreement and for a period of at five (5) years thereafter.
- 3.0 <u>Management Reports</u>. Upon request, Provider must be able to summarize and concisely report to Customer in a timely manner such pertinent information relating to the Services as may be reasonably requested by Customer throughout the duration of the Agreement.
- 4.0 <u>Relationship of the Parties</u>. In assuming and performing the obligations of the Agreement, Customer and Provider and any supplier shall each be acting as independent parties and neither shall be considered or represent itself as a joint venturer, partner or employee of the other.

- 5.0 Equal Opportunity. No supplier of goods and/or services under this Agreement shall discriminate against any employee, applicant for employment, or recipient of services on the basis of veteran status, race, religion, color, sex, sexual orientation, age, disability, or national origin.
- 6.0 <u>Taxes Customer is Exempt</u>. Customer is exempt from State of Utah sales and excise taxes (State of Utah Sales Tax Exemption number: 20203). Exemption certification information appears on all purchase orders issued by Customer and such taxes will not apply to Customer unless otherwise noted.

31. . . ·

On-Premise		Cost
	Installation Labor	\$568.00
	Installation parts	\$150.00
	Equipment costs (including Make & Model)	\$9,103.22
	On-premise capital construction (conduit, trenching,	
	boring, etc. on school property)	\$300.00
Off-Premise		
	Capital Construction	\$90.00
	Infrastructure/aggregation equipment	\$10,620.46
	TOTAL NRC	TOTAL NRC \$20.831.68

zone-ethx-3000-shdsl \$600.00 service drops \$150.00 \$150.00 jumpers,ends,cabling shown installation, line grooming testing and turn-up labor \$284.00	Cisco ws-c3750g-24ts-s zone-ethx-3000-shdsl \$600.00 jumpers, ends and cabling \$45.00	Anchor Stone YIC cisco 3560 scone-ethx-3000-shdsl \$13,951.61 \$600.00 service drops jumpers,ends,cabling \$150.00 \$75.00 installation, line grooming testing and turn-up labor \$284.00	Cisco WS-C3560v2-24ts-e \$3,951.61 zone-ethx-3000-shdsl \$600.00 jumpers, ends and cabling \$45.00
On-Premise 1 1 1	Off-Premise 1 1 1	On-Premise 1 1 1	Off-Premise 1

Grand Total \$20,831.68

Exhibit A

Attachment A: Utah Schools (Reference Bid #81991)

On-going Monthly 1000 MB Ethernet		\$972.60	\$972.60	\$972.60	\$972.60	\$972.60	\$4,321.41	\$1,182.60		\$841.35	\$841.35	
One-time Ethernet										\$9,657.22	\$11,174.46	
One-time Conduit Placement Costs										NA	NA	
State		Ţ	UT		UT	TU	IU	UT		In	Ţ	
City/Zip		Manti/84642	Manti/84642	Ephraim/84627	Mt. Pleasant/84627	Sterling/84655	Ephraim/84627	Ephraim/84627		Manti/84642	Ephraim/84627	
Address		100 West 500 North	39 South Main	555 South 100 East	390 East 700 South	Sanpete River Bridge, 50 W Center Street	50 West Center Street	Highway 89 and Pigeon Hollow Road		920 North 0000East/West	90 North 161 West	
School Location		Manti High School	South Sanpete District Office	Ephraim Middle School	North Sanpete High School	Gunnison Telephone Interconnect	-State WAN Interconnect	Centracom Interactive (Central Utah Telephone) Interconnect		Manti Anchor Stone Youth in Custody	Ephraim Young Women Empowerment Youth in Custody	
Zip		84642	84642	84642	84647							
City State		Ti	UT	Ţ	TU				et			
City	oit Ethernet	Manti	Manti	Manti	Mt. Pleasant				r over Ethem			
Aggregation Location	EXISTING SERVICES: 1000NB WAN Gigabit Ethernet	District Office, 29 South Main	District Office District Office, 29 South Main	District Office District Office, 29 South Main	District Office, 220 E. 700 S.				NEW SERVICES 20MB WAN Service Copper over Ethernet	District Office, 29 South Main	District Office District Office, 29 South Main	
District	EXISTING S	South Sanpete	South Sanpete	South Sanpete	North Sanpete	Interconnect	Interconnect	Interconnect	NEW SERVIC	South Sanpete	South Sanpete	

Exhibit F

Before the Federal Communications Commission Washington, DC 20554

In the Matter of)
Request for Review by)
) CC Docket No. 02-06
Utah Education & Telehealth Network,)
aka Utah Education Network (BEN 150246)) CC Docket No. 13-184
of)
Decision of Universal Service Administrator)
)

Request for Waiver of the Commission's Rule Requiring Appeals be Filed within 60 Days

RE: Appeal of USAC Decision to Deny Funding Request and Subsequent Appeal 2015 FCC Form 471 # 1004867, FRN 2729808 SPIN – 143002567, Manti Telephone Company

The Utah Education and Telehealth Network seeks a waiver of the Commission's rule requiring appeals be filed with the Commission within 60 days of an adverse decision made by USAC.¹ Any of the Commission's rules may be waived if good cause is shown.² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴ As the Commission has noted in deciding E-rate requests for waivers,

¹ 47 C.F.R. § 54.720(a).

² 47 C.F.R. § 1.3.

³ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

⁴ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166.

simple "mistakes do not warrant the complete rejection" of E-rate applications.⁵ Further, the Commission has granted waiver requests exactly like this one when parties have submitted their appeals to USAC or the Commission only a few days late.⁶

Through an error in calculating the date on which such appeal is due, UEN incorrectly concluded that the filing deadline for its appeal was March 26, 2016, instead of March 21, 2016. UEN requests that the Commission treat its Appeal as timely filed based on a filing date of March 25, 2016, which is the date that this Motion and the Appeal itself were contemporaneously filed with the FCC and served upon the Universal Service Administrative Company, Schools and Libraries Division.

Respectfully requested,

Sabrina Scott

Utah State E-rate Coordinator
Utah Education and Telehealth Network
101 Wasatch Dr.
Salt Lake City. UT 84112

Solmin S. So

e: sabrina.scott@utah.edu

⁵ Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, FCC 07-35, at para. 10 (2007) (Adams County Order).

⁶ See, e.g., Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late). See also Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, DA 16-220 (Feb. 29 2016) (granting the waiver request of Bastrop Independent School District, TX, Application No. 962244, Request for Waiver, CC Docket No. 02-6 (filed Jan. 27, 2016).

Certificate of Service

I, Sabrina Scott, certify that, on the date stated below, I caused the foregoing Request for Waiver, and the foregoing Request for Review by Utah Education & Telehealth Network, aka Utah Education Network (BEN 150246) or Decision of Universal Service Administrator to be served upon the Administrator by mailing a true and correct copy to the Universal Service Administrative Company School and Libraries Division, Correspondence Unit, 30 Lanidex Plaza West, P.O. Box 685, Parsippany, New Jersey, 07054-0685.

Dated this 25th day of March, 2016

Salvin Scoto.

(signature)